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Ministry of the
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General

The Provincial Court (Civil Division) of the Municipality of Metropolitan Toronto







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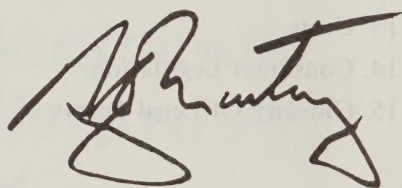
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A Message from the Attorney General

In May of 1979 I introduced legislation to set up, as an experimental project in the Municipality of Metropolitan Toronto, the Provincial Court (Civil Division) of the Municipality of Metropolitan Toronto which would take over the jurisdiction of the Small Claims Courts in this area and, in addition, have jurisdiction over most types of civil claims up to \$3,000. One of the chief motivations behind the legislation was a commitment to make the courts of Ontario more accessible to citizens and to provide less expensive, less prolonged methods of settling disputes. Following enactment of the legislation, an Advisory Committee was appointed to make recommendations on the procedures and rules which should be followed in the new court. The Committee's recommendations formed the basis for the rules which now govern proceedings in the court and which are described in this guide.

The legislation was proclaimed in force as of June 30, 1980, and it was, therefore, on that day that the court offices began accepting claims for up to \$3,000. These claims will be processed and heard in accordance with the new rules. This guide has been prepared to acquaint you with the new rules and how they work.

A handwritten signature in black ink, appearing to read 'R. Roy McMurtry', with a stylized, flowing script.

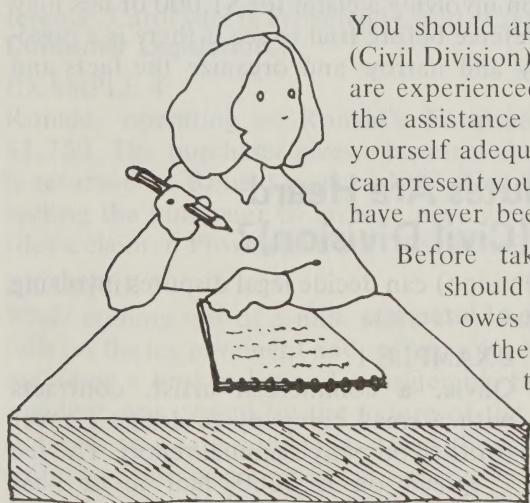
R. Roy McMurtry

1. Introduction

It is important to emphasize that the Provincial Court (Civil Division) is limited to Metropolitan Toronto. The rules as to the territorial jurisdiction of the Court are explained below. (See Section 3 – **In Which Local Division Should I Sue?**) Small Claims Courts in other parts of Ontario are still limited to claims under \$1,000.

The Provincial Court (Civil Division) provides a convenient and inexpensive forum for deciding claims up to \$3,000. Procedures are more informal, faster, and cheaper than in other courts. Lawyers are permitted to appear, but parties may represent themselves.

The purpose of this booklet is to provide you with a working guide to the Provincial Court (Civil Division) and the services it offers. Read it through once carefully, and then refer to the individual sections as you need them. You will find a glossary of legal terms at the back.



You should approach the Provincial Court (Civil Division) with confidence. The judges are experienced in settling disputes without the assistance of lawyers. If you prepare yourself adequately, you will find that you can present your case effectively even if you have never been in a court of law before.

Before taking legal proceedings, you should contact the person you think owes you money, put your side of the story to him or her, and ask that the amount in dispute be paid.

A good idea is to write a letter setting out the facts and requesting pay-

ment. Make sure to keep a copy of any correspondence of this type.

If this approach fails, you can take your case to the Provincial Court (Civil Division) where it will be heard by a judge who is objective and impartial.

There are several officials whose services are available to you in the local office of the Court. The CLERK is the chief administrative officer. If you are considering starting an action, you should consult the office of the clerk nearest you. (See Section 3 – **In Which Local Division Should I Sue?**)

A member of the clerk's staff is available to assist you and to help you fill out the necessary forms. Steps such as notifying the other party of

the claim and summoning witnesses will be taken by the clerk's office on your instructions. A small fee must be paid for each step. You may be able to recover these fees from the other party if you are successful at trial. (See Section 13 – **Costs.**)

The BAILIFF is responsible for serving documents, such as the Claim or a subpoena. The bailiff has the power to seize and sell goods to pay off an unpaid judgment where specifically instructed to do so by someone who has won a judgment.

The REFEREE'S office provides a service for the overburdened debtor. The referee provides debt counselling and, in many cases, can work out a scheme of repayment which is mutually satisfactory to a debtor and his creditors. In other circumstances the referee may be able to arrange a Consolidation Order that will allow a debtor with several unpaid judgments to pay his debts according to a schedule he can afford.

In addition, parties to an action involving a claim for \$1,000 or less may be asked to appear before the referee before trial to see if there is a possibility of settlement or to try and narrow and organize the facts and issues to be presented at trial.

2. What Types Of Disputes Are Heard In Provincial Court (Civil Division)?

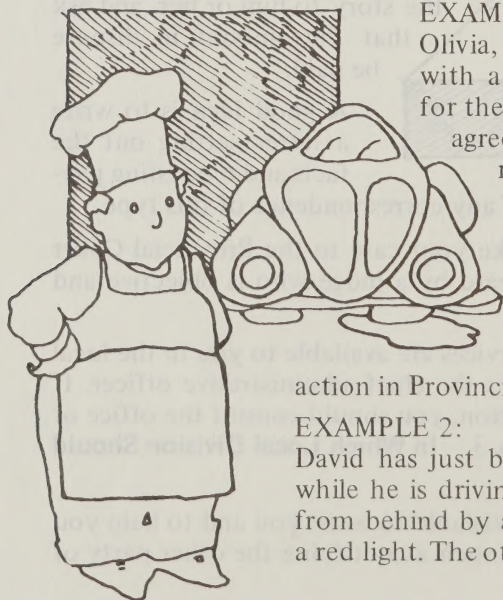
The Provincial Court (Civil Division) can decide legal disputes involving claims up to \$3,000 (exclusive of interest).

EXAMPLE 1:

Olivia, a commercial artist, contracts with a small company to design a cover for the company's annual report. The fee agreed on is \$800, half to be paid right away and the other half when the job is finished. After completing and submitting her design, Olivia requests payment of the \$400 still owing, but she gets nothing more than promises. She commences an action in Provincial Court (Civil Division).

EXAMPLE 2:

David has just bought a new car. One afternoon, while he is driving home from work, he is bumped from behind by another car while he is stopped at a red light. The other driver insists that the accident



was not his fault, although David is sure it was. David's fender requires repairs costing \$75. Since the deductible in David's automobile insurance policy is \$100, the damage is not covered by his insurance. David sues the other driver in Provincial Court (Civil Division).

EXAMPLE 3:

Carol buys a new refrigerator. The dealer tells her that he is offering it at a special low price, because it is a "last of the line" model. He says that this particular model line has been discontinued and is no longer available. He tells her that this model is not available from any other dealer. He also tells her that this particular model has a much larger capacity than similarly priced models still being produced. On the strength of these representations, Carol buys the refrigerator for \$425. Later in talking with her neighbours, she discovers that exactly the same model of refrigerator is widely available at \$325, and that the model line has not been discontinued. The seller refuses to refund the difference. Carol sues in Provincial Court (Civil Division). (See Section 14 – **Consumer Legislation.**)

EXAMPLE 4:

Ronald, operating as Ronald's Furniture, sells furniture valued at \$1,750. The purchaser gives a personal cheque in payment. The cheque is returned to Ronald marked NSF (Not Sufficient Funds). After contacting the purchaser to arrange payment, without any success, Ronald files a claim in Provincial Court (Civil Division).

EXAMPLE 5:

While coming out of a milk store in a shopping plaza, Martha slips and falls on the icy pavement and suffers somewhat serious personal injuries, including a broken leg and considerable bruising. She believes that the accident was caused by the failure of the store owner to maintain the sidewalk in a safe condition. Altogether she estimates that the pain and suffering, lost wages, medical expenses not covered by OHIP, and damage to her clothing resulting from the accident amount to about \$2,599. The store owner refuses to accept liability. Martha commences an action in Provincial Court (Civil Division). (NOTE – In cases of this type, where the factual and legal issues are likely to be complicated, Martha would probably want to consult a lawyer).

These are some examples of the types of cases that might be heard in Provincial Court (Civil Division).

Claims are broadly divided into two types:

- debt or money demand
- damages

A *debt or money demand* is a claim for an amount of money which can be definitely determined by reference to an oral or written contract, or

to some other agreement. Examples are claims based on a “bounced” cheque, on default in repayment of a loan, or for arrears of rent. In a *claim for damages* the plaintiff first has to prove to the judge that he has suffered some amount of loss because the defendant has injured him or his property. The plaintiff will then have to prove the amount of the loss by further evidence, e.g. by having the mechanic who repaired a car tell the judge how much the repairs cost. Examples of this type of claim are a claim for damage to property caused by careless operation of a car, a claim for damage to leased property, and a claim for damage to furniture in moving.

The following is a list of the types of claims most frequently made in Provincial Court (Civil Division):

- failure to pay back a loan
- failure to pay where merchandise is sold on credit
- on a cheque marked NSF (Not Sufficient Funds) where there is not enough money in the account to cover the cheque
- for arrears of rent
- for payment for work done by a plumber, electrician, carpenter, etc.
- for damage to a motor vehicle caused by the careless operation of another vehicle
- for other types of property damage, e.g. goods damaged in transport or clothing damaged during dry cleaning
- for recovery of money paid where goods or services do not come up to the standard of quality agreed on. (See Section 14 – **Consumer Legislation**).
- for damages for breach of contract
- for damages resulting from personal injury where the injury is of a relatively minor nature
- for the recovery of property in someone else’s possession (“replevin”).

This list is by no means exhaustive.

Many automobile accident claims will, of course, be covered by collision insurance. However, your insurance company may want to sue the other driver to recover the amount it has paid you, or you may simply want to sue to recover your deductible.

Limitation Periods

You must pay attention to “limitation periods.” A limitation period is a period of time, dating from the original cause of action, within which, by law, you must sue. In most of the cases listed above, you have six

years to sue after the date of the action complained of. However, in lawsuits based on injury to person or property, you may have two years or less from the date the cause of action arose in which to sue. Generally you must act promptly, and you must not allow any claim you have against another person to become stale. If you are in doubt as to the applicability of a limitation period, you should seek legal advice.

Claims Against The Crown

When someone has a claim against the Crown, there is a requirement that the Crown be notified before the Claim is entered. Notice of the Claim must be given to the Crown at least 60 days before a Claim is entered. In this context “Crown” refers to the government of Ontario. A claim against the Crown includes a claim against a Ministry, against a Crown agency, or against an employee of the provincial government for something done in the course of employment. The notice may be in the form of an ordinary letter setting out the nature of the claim and the facts on which it is based. The notice should be sent to:

Crown Law Office Civil
Ministry of the Attorney General
18 King Street East
TORONTO, Ontario
M5C 1C5

A copy should be sent to the particular Ministry, agency, or employee against whom the claim lies.

Claiming More than \$3,000

You may feel you have a claim for more than \$3,000, but wish to bring your action in Provincial Court (Civil Division), because it is cheaper and more accessible. In that case, you may sue for \$3,000 and abandon the rest of your claim. However, if you obtain a judgment in your favour, you will have no further right to sue for the excess in any court.

3. In Which Local Division Should I Sue?

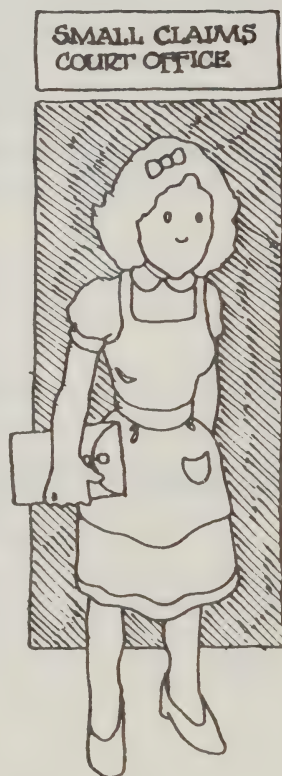
The Provincial Court (Civil Division) has four local divisions with a court office in each:

Toronto Small Claims Court
College Park
444 Yonge Street
TORONTO, M5B 2H4
(416) 598-2842

Etobicoke Small Claims Court
2265 Keele Street
TORONTO, M6M 5B8
(416) 249-8251

Scarborough Small Claims Court
2130 Lawrence Ave. E.
TORONTO, M1R 5B9
(416) 755-3651

North York Small Claims Court
47 Sheppard Avenue East
Third Floor
TORONTO, M2N 5X5
(416) 225-4846



You will have a choice as to the local division of the Provincial Court (Civil Division) in which to enter your claim. A claim may be filed in the local division for the area:

- where the cause of action arose, i.e. where the event took place which gives you a right to sue
- where the defendant lives or carries on business
- which is closest to the defendant's residence.

If you are in doubt, you should consult the clerk of the local division nearest you to determine which is the proper court in which to bring your action.

If you have a choice of suing in two or more local divisions, it is probably best to sue in the local division for the area where the defendant lives or carries on business. If you obtain a judgment against the defendant, collection will be easier.

Dividing a Cause of Action

Note that you cannot “divide your cause of action.” This means that you cannot enter two or more separate claims arising out of the same set of facts in different local divisions of the Provincial Court (Civil Division) for the purpose of recovering more than \$3,000. For example, if \$3,500 damage is done to your car by someone else’s careless driving, you cannot sue for \$3,000 in one action where the accident happened and for \$500 in a second action. You can only abandon the excess over \$3,000 and sue in one court. Otherwise, you will have to bring your action in a higher court.

You should note that most trials, where the claim is in excess of \$1,000, will be held in provincial courtrooms at College Park. Where the claim is \$1,000 or less, generally the trial will be held in the local division where the claim was entered.

4. Entering a Claim

The Claim

Once you have chosen the proper local division, you commence your action by filing a Claim with the clerk of that local division, together with the prescribed fee. You should use the Claim form which is available from the court office. The original Claim will be kept in the court office, a copy will be returned to you, and a copy or copies will be given to the bailiff for service on the defendant or defendants.

In the Claim you must set out, briefly but clearly, the amount you are claiming, the person, business or company who owes you the money, and all the reasons why you feel you are entitled to that amount. You should be succinct but give all relevant details. The clerk can assist you in filling out a Claim.

The fee for entry and service of a Claim will vary from \$14.50 to \$31 depending on the amount claimed, and will be slightly higher if there is more than one defendant. (See Section 13 — **Costs**). These fees will be added to the amount of the judgment you are entitled to recover if you are successful. Note that all fees charged in Provincial Court (Civil Division) are payable *in advance*.

Plaintiff's Name and Address

If your claim is based on business transacted by a limited company which you own, you must sue in the name of the company. Otherwise, you sue in your own name. Be sure to include your full address.

Defendant's Name and Address

Since a copy of your Claim will be served by the bailiff on the defendant (or on each of the defendants, if there is more than one), the defendant(s) must be clearly identified and correctly named. Your Claim should, therefore, include the following information about the person (or company) you are suing:

individual — name, home address including street number and apartment number

incorporated company — name of company, name of officer to be served, and address including suite number

unincorporated business — name of owner, name of the business, and the address of both

partnership — names of partners, name of the firm, and the address of the place of business.

You can obtain the correct name and address for service of:

- a corporation
- an unincorporated business carried on under a different name than its owner's

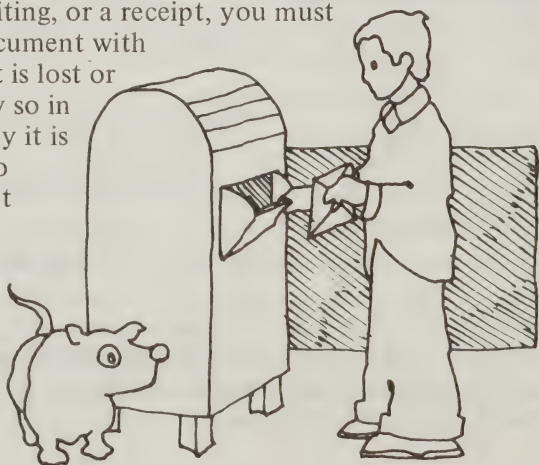
by contacting the Companies Division of the Ministry of Consumer and Commercial Relations at 555 Yonge Street, Toronto, Ontario M7A 2H6.

Documents

If your claim is based on a document, such as a bad cheque, a promissory note, a contract in writing, or a receipt, you must file a photocopy of the document with the Claim. If the document is lost or unavailable, you should say so in your Claim and explain why it is not attached. Remember to bring the original document with you to the trial.

Minors

The rules of the Provincial Court (Civil Division) provide that a person who is under the age



of 18 may sue for any sum not exceeding \$500 as if he or she were of full age. Where a minor wishes to sue for an amount over \$500, he or she must file the written authority of an adult, called the “next friend”, who consents to be responsible for the costs of the action.

Prejudgment Interest

You should always ask for interest in your Claim. Interest at a fair rate may, if claimed, be added to your judgment:

- in an action for a debt or money demand (see pg. 7)*
- from non-payment to the date of the judgment
- in an action for damages (see pg. 8)*
- from the date on which you notified the defendant in writing of your claim to the date of judgment.

Note that in the second case interest runs from the date the defendant received written notification of your Claim. Service of a copy of the Claim on the defendant would, of course, be such notification. But you may wish, even before filing your Claim to send the defendant a letter stating your Claim in order to see if the defendant is willing to settle without a legal action being commenced. Any possible advantage the defendant might have by delaying will be eliminated by the fact that he will be required to pay interest on the amount owing for the period of the delay. If you do send a letter to the defendant, be sure to keep a copy which you can produce at the trial, if necessary.

5. What Should I Do If I Receive a Claim?

If you are served with a copy of a Claim naming you as defendant, you will have a number of choices.

What should I do if I agree that I owe the plaintiff the amount claimed?

You should pay the amount claimed, plus court costs, into the court office within 20 days after receiving the summons. The money will be paid over to the plaintiff and a trial will not be necessary.

What should I do if I feel I don't owe all the money claimed?

If you feel that you owe some but not all of the amount claimed, you may pay the lesser amount into the court office within 20 days, and file a Defence as to the rest. The plaintiff will be given an opportunity to accept or reject the amount paid into court as full satisfaction of the claim. If the plaintiff rejects your offer and then at the trial recovers only the sum you paid in, or less, he or she may have to pay the costs which you have incurred in the action from the time of the payment into court.



What if I agree that I owe the money but can't afford to pay it right now?

You should contact the plaintiff and attempt to arrange a plan for payment by instalments payable directly to the plaintiff or to the court office. Remember that if you ignore the Claim, the cost of each additional step that the plaintiff takes will be added to the amount that you will ultimately have to pay.

Another possibility open to you is to file a Defence

within 20 days admitting liability for the Claim but with a request to arrange terms of payment. You will also have to file a Financial Statement. A hearing before the referee will then be arranged. At the hearing, the referee will listen to both sides and try to help the parties agree on an arrangement for payment by instalments or otherwise. The referee may set the terms out in an order, and this order is enforceable by the court.

What if I feel I don't owe the money or that the facts set out in the Claim are incorrect?

You should file with the clerk a Defence. A form is available from the court office. Filing may be done by mail or in person and must be done within 20 days after receiving the claim. The Defence should clearly outline all your reasons for disagreeing with the Claim. A copy of the Defence will be sent to the plaintiff.

Where a Defence is filed to any Claim for \$1,000 or less, a resolution hearing may be held before the referee with the object of reaching a settlement at this stage of the proceeding. If no agreement can be reached during this informal hearing, the Claim will be listed for trial before a judge. At least 10 days before the trial, both parties will receive a Notice of Trial setting out the date, time, and place of the trial.

Where a Defence is filed to a claim for more than \$1,000, a Pre-Trial Conference may be held. (See Section 7 – **Pre-Trial Conferences**).

What if I don't file a Defence?

If the plaintiff's claim is for a debt or money demand and you do not file a Defence within 20 days, the clerk may sign judgment against you. This judgment is as valid as if it had been obtained after a trial, and will allow the creditor to take such procedures as seizures of your bank account. (See Section 6 – **Default Judgment**).

If the plaintiff's claim is for damages, failure to file a Defence will put you in the position of having admitted liability. In other words, you are legally obligated to pay damages, although the amount will still have to be assessed by the judge at a trial. If you fail to file a Defence, you will not be notified as to the trial date. The judge, at the trial, may assess the damage in your absence, and may give judgment in favour of the plaintiff.

One more thing. If you fail to file a Defence within 20 days after receiving the Claim, you can still do so at a later time, but only by applying to a judge. You will have to convince the judge that there was a good reason, such as serious illness, for your failure to file within the time limit. Contact the clerk to find out how to apply for the judge's permission.

What if I feel that in fact the plaintiff owes me money?

You may include with your Defence a Counterclaim (either in the same document or as an attachment) stating clearly why you think you are entitled to recover the money from the plaintiff. The Counterclaim puts you in the position of a plaintiff and should be prepared in the same manner as a Claim. (See Section 4 – **Entering a Claim**). You will have an opportunity to present your Counterclaim in court, usually on the same day as the plaintiff's claim is presented.

What should I do if I feel that someone else is responsible for all, or part, of the plaintiff's claim?

Enter a Third Party Claim with the clerk against the person (called the "third party") you feel is responsible. A Third Party Claim, like a Counterclaim, should be very similar to a Claim as described in Section 4 and should contain:

- the reasons for bringing the third party into the action
- the amount of the plaintiff's claim for which you feel the third party is responsible
- The name and full address of the third party.

The third party will then be served with a copy of the Third Party Claim. You will be in the position of a plaintiff as against the third party. The judge will determine the responsibility of the third party, usually at the time of the trial of the plaintiff's Claim, and your liability of the plaintiff may be reduced or eliminated.

What should I do if I feel that the Claim was filed in the wrong court?

If you feel that the local division of the court in which the Claim was entered does not have authority to hear the Claim (see Section 3 – **In Which Local Division Should I Sue?**), you must say so specifically in your Defence. Otherwise the court will be taken to have full territorial jurisdiction over the plaintiff's claim, and you will not be permitted to object at trial.

6. Default Judgment

If the plaintiff's Claim is based on a debt or money demand, and the defendant does not file a Defence with the clerk within 20 days of receiving the Claim, the clerk may sign a default judgment. Usually, the clerk will do so and will notify the defendant. This is a final judgment of the court declaring that the plaintiff is entitled to recover the amount stated in the Claim plus court costs. It has the same effect as a judgment given by a judge after a trial. The plaintiff will be in a position to take steps to collect his or her judgment (See Section 10 – **What Should I Do If My Judgment Isn't Paid?**).

If a default judgment against you has been obtained, you may apply to a judge to have the judgment set aside and a trial ordered on the original Claim. You should contact the clerk of the local division in which the default judgment was signed to find out the procedure for preparing a Notice of Motion plus an Affidavit in Support. You will have to show by the affidavit very good reasons why such an order should be made. The other side must be served with the Notice of Motion and may appear to oppose it.

7. Pre-Trial Conference

In certain cases the court may order the plaintiff and the defendant to attend a pre-trial conference. A pre-trial conference will be held before a judge. The purpose of the pre-trial conference is to resolve, or at least define, the issues in dispute. It is not a formal hearing, and will be conducted in an informal atmosphere designed to put the parties at ease. The judge will explore the dispute and try to find a measure of agreement on at least some of the issues. He or she may summarize the matters agreed on in a memorandum, and ask the plaintiff and defendant to approve it.

In some cases the pre-trial conference will enable the plaintiff and the defendant to reach a settlement in which case no trial will take place. Where a settlement cannot be reached, a Notice of Trial will be sent to the parties. Hopefully, the trial will be shortened and simplified as a result of the pre-trial conference. The judge who presides at the pre-trial conference will not hear the trial unless both parties consent.

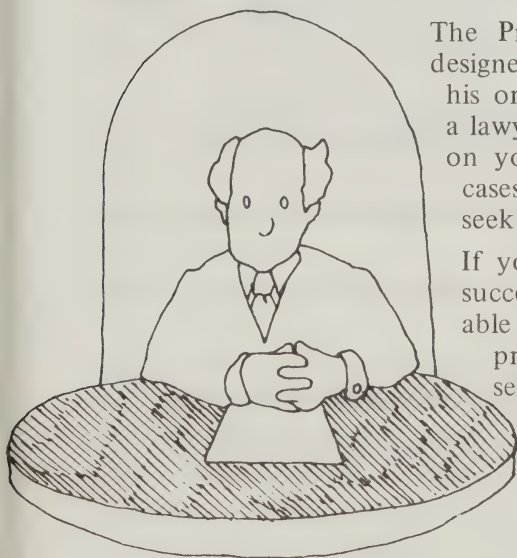
8. Preparing For Your Trial

If You Are The Plaintiff

You must appear in person at the trial, though you may have a friend or representative accompany you to present the facts of your case. In most cases you will want to give evidence yourself. It is desirable that you present your case and question witnesses yourself. Procedure is very informal, and the judge is concerned to see that the trial is conducted fairly, not whether technical rules are adhered to. There is no need to feel that you cannot present your case effectively because you lack experience. If you have prepared your case carefully, you will have no difficulty in presenting your case to the judge.

If you feel that you do not speak English well enough to present your case yourself, you are responsible for getting an interpreter to come to court with you. The interpreter may be a friend or family member. Give your evidence in a clear voice. Speak up and don't be shy. The court must hear what you have to say, either personally or through your interpreter.

Keep your evidence to the point or points of your claim or defence. Do not ramble on or become repetitious. Above all, do not become emotional. The judge is a careful listener, and will quickly understand your evidence.



The Provincial Court (Civil Division) is designed to enable any person to handle his or her own case without the help of a lawyer. A lawyer is permitted to appear on your behalf, however, and there are cases for which it may be advisable to seek legal assistance.

If you do hire a lawyer, even if you are successful in your case, you will only be able to recover from the other party a proportion of what the lawyer's services may cost you. (See Section 13

— **Costs**).

Discovery

Discovery is a procedure used in the higher courts by which the facts relevant to a legal dispute can be obtained before trial. A party to a law-

suit may be required to appear before a court officer to answer under oath questions put to him by the other party's lawyer. Or a party may be compelled to reveal all the documents in his possession which have a bearing on the subject matter of the lawsuit. In the higher courts these proceedings often occupy a considerable amount of time.

In Provincial Court (Civil Division), as in the Small Claims Courts, discovery is generally not permitted. In certain cases, however, where there is complex factual or documentary evidence in issue, the judge may order discovery. Such discovery might involve oral examination under oath, written questions and answers, or inspection of documents.

Your Day in Court

When you receive your Notice of Trial, you should carefully note the time, date and place of the trial. Make sure any witnesses you intend to call have been subpoenaed and know when the trial is to take place. (See **Witnesses** on page 21). You should wait inside the courtroom after you arrive to make sure that you are ready when your name is called.

When the court opens, there are usually a few preliminary matters, such as adjournments, to be dealt with before the trials begin. You will usually be allowed one adjournment without any difficulty, particularly if the other party consents. Due to the financial hardships caused by adjournment, as when an opposing party has not been notified, and may lose a day's pay, you should:

- i) notify the opposite party well before the trial date, giving the reasons for the request for the adjournment, preferably in writing.
- ii) advise the other party that you will attend to the adjournment in court; and
- iii) undertake to notify the other side in writing of the new trial date.

When your case is called, you should proceed to the front of the courtroom and take a seat at the table in front of the judge's bench. Generally the clerk of the court and the court stenographer (required in some cases) will be seated in front of you below the judge. To the judge's side you will see the witness stand.

Procedure

Procedure is generally the same as procedure in other courts. The emphasis is on informality.

If You Are The Plaintiff . . .

You will be expected to speak first. You may make a brief opening statement as to the nature of your claim, or you may simply call your first witness. In some cases you will be the only witness for your side, and in almost all cases, you will want to give evidence to support your case. When you give evidence, you must enter the witness-box and take an oath to give your evidence truthfully. You may make a solemn affirmation in place of an oath.

You will then have an opportunity to present your case and all the facts you are relying on. You should present your evidence in narrative form (i.e. begin at the beginning and work through the facts in the order they occurred). Try to avoid repetition and unnecessary detail. If the judge sees that you are having difficulties, he or she will help you by asking relevant questions. You will not be permitted to read your evidence, but you may refer to notes. When you have finished giving evidence or questioning a witness, your opponent will have an opportunity to cross-examine (question) you or the witness. The purpose of cross-examination is to point out inconsistencies in, or cast doubt upon the accuracy of, the witness' testimony. The judge will control the cross-examination to make sure that the witness is not harassed.

You will have the same opportunity to cross-examine the defendant or his witness when the time comes. Remember that cross-examination is an opportunity to ask questions. The judge will not allow you to argue with the witness or to start telling your own version of the facts.

If you are relying on documents such as contracts or receipts, you should introduce them yourself from the witness-stand. They will be taken from you and marked as exhibits and will not be returned until 15 days after the trial is completed. You may refer to these exhibits as you present your case.

If You Are The Defendant . . .

You will have an opportunity to present your side of the case after the plaintiff's case has been presented. Read the previous section to get advice on how to put your case to the judge. Keep in mind that it is up to the plaintiff to prove his or her case on what is called "the balance of probabilities." This means that the plaintiff must convince the judge by evidence that it is more likely than not that the events took place as he or she asserts. Therefore, as defendant, you will not have to show that the plaintiff's story is absolutely impossible, but simply that it is less likely than your version of the events.

Evidence

The judge may admit any evidence which is relevant to the questions to be decided. You should always try to obtain and present in court the most direct, most reliable evidence you can, whether in the form of witnesses, letters, documents, photographs or any other type of evidence. Remember that even after a particular piece of evidence has been admitted, the judge must still decide on its “weight” (i.e. how convincing it is in relation to the other evidence presented).

Proving a Claim for Damages

Special consideration must be given to proving a claim for damage to property. Such damage might arise as a result of a motor vehicle accident, furniture moving, a plumbing contract and so forth. After the liability of the defendant has been established, the plaintiff must still prove, by evidence, the exact amount of the damage. The rules of the Provincial Court (Civil Division) provide a method by which, if the defendant does not object, a written repair estimate, or repair bill, can be introduced as evidence without having to call as a witness the person who made the estimate or did the repairs. A copy of any repair estimate or bill that the plaintiff intends to rely on must be given to the defendant at least 20 days before the trial date. An estimate must be accompanied by a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, and by a copy of a receipted bill showing the items of repair made and the amount paid. A recommended practice is to submit copies of the repair estimate, or repair bill, to the court office, along with the claim so that they may be served at the same time as the claim. It is wise to submit at least two current repair estimates in order to demonstrate that the plaintiff's claim for damages is reasonable.

Note that if the defendant, not less than 10 days before the trial date, delivers to the plaintiff a demand that the person who prepared the estimate, or did the repairs, be present at trial, the plaintiff will have to call that person as a witness and his or her testimony will be subject to cross-examination.

Also, even if the defendant does not object, the trial judge may require that the person who prepared the estimate, or did the repairs, be called as a witness.

A Note on Motor Vehicle Accident Claims

If you are suing an uninsured driver, and no defence has been filed, you should apply to the Motor Vehicle Accident Claims Fund (555 Yonge Street, Toronto, Ontario M7A 2J4) requesting permission to proceed to trial and judgment. Failure to get such permission will deny you the right to claim from the Fund.

Witnesses

When you receive the Notice of Trial, you should contact all the witnesses you think you will need to give evidence on your behalf and let them know the date, time, and place of the trial. You should alert the witness to the fact that he or she should be prepared to spend a whole day in court, since your trial may not necessarily take place exactly at the time mentioned in the Notice.

Even if your witness is anxious to come to court and help you, you should subpoena that witness. If nothing else the subpoena will serve as a reminder. If the witness is reluctant to testify, a subpoena is essential. Subpoenas are issued by the court clerk at your request. A fee will be charged for issuing each subpoena. You must also include a witness-fee and travelling expenses. These fees are very minimal and can be recovered from your opponent if you are successful at trial. The court clerk will be able to advise you of the exact amounts. (See Section 13 — **Costs**.) Subpoenas will usually be served by the bailiff.

If someone is in possession of documents which you think will be useful to you at trial, you can add a demand in the subpoena that the witness bring those documents to court on the day of the trial.

It is perfectly proper to discuss in advance the evidence that a witness is going to give. You must *not*, of course, in any way attempt to influence the witness to do anything other than tell the truth as he or she sees it. But you may talk over what facts that witness knows in order to prepare questions for the trial and decide in what order you want to call the witnesses.

9. Judgment

After both the plaintiff and the defendant have finished presenting their evidence, each will have a chance to sum up briefly and make any last submissions.

Normally the judge will give judgment immediately after both sides have concluded. In some instances, however, the judge may need time to consider the facts and the applicable law before giving judgment. If the judge “reserves” judgment in this way, the judgment will be mailed to you at a later date.

A judgment is a declaration of the Court that one party is entitled to receive from the other a certain sum of money plus interest (in some cases) plus court costs. (The judgment may declare that the plaintiff

owes the defendant money where the defendant has made a Counterclaim.) The judgment is not a guarantee of payment. The question of how to collect the money if the other party fails to pay is discussed in the next Section.

If the judge finds you liable to pay money to the other party, and you cannot pay the whole amount right away, tell the judge that you need time to pay. The judge has power to order payment by instalments.

10. What Should I Do If My Judgment Isn't Paid?

There are several methods of collecting an unpaid judgment through the Provincial Court (Civil Division). No attempt will be made in the Guide to describe all the procedures in detail. The Court staff can tell you how to collect an unpaid judgment according to the methods briefly set out here. Most of the necessary steps will be taken, on your instructions by the clerk of the Court. A fee is charged for the services of the Court, but this fee can be recovered.

It should be kept in mind in reading the following sections that the "plaintiff", when referred to, may also include a defendant who has been awarded money as a result of a Counterclaim or a Third Party Claim.

Judgment Summons

To make use of the collection methods available to a plaintiff, it is usually necessary to have a certain amount of personal information about the defendant, such as the nature and extent of his or her assets and any debts owing to him or her. Where the judgment remains unpaid, the plaintiff may obtain such information by bringing the defendant back before the judge to explain why the judgment has not been paid.

The clerk can assist the plaintiff in obtaining a Judgment Summons. At the hearing the judge will examine the defendant as to his ability to pay. The judge may order the debtor to pay the judgment by instalments paid into the Court office. The judge may, however, dismiss the summons where the defendant simply is unable to pay. In this case the plaintiff cannot get another Judgment Summons for six months. The judge also has power to order that payment of the judgment, or any of the instalments, be postponed where the judge is satisfied that the defendant is unable to pay because of sickness or any other cause.

Show Cause Summons

If an order to pay instalments is made at the Judgment Summons hearing, and the defendant fails to pay any of the instalments for more than 14 days, the plaintiff may bring the defendant before the judge again by a Show Cause Summons. There is no imprisonment for debt in Ontario. The defendant may only be imprisoned if he or she wilfully refuses to attend the show cause hearing or if the defendant attends but refuses to answer proper questions regarding the default. Even then the defendant may be ordered to attend another judgment summons hearing instead of being committed to the local jail.

It should also be noted that the judge, at a show cause hearing, may vary any order made at a judgment summons hearing where the circumstances of the debtor have changed.

Garnishment

Garnishment is a procedure whereby a plaintiff who has been successful in an action can collect the judgment awarded by claiming from a third party money owed by that third party to the defendant. For example,

if the defendant refuses to pay or cannot pay, a portion of the defendant's wages can be obtained directly from the defendant's employer.

In addition to wages, bank accounts, money owing on a contract and unpaid rent may be garnished.

The clerk can help you to arrange for a Direction to Garnishee to be sent to the person who owes the money to the defendant. This person is called the "Garnishee". A Direction to Garnishee requires the garnishee to pay the amount he owes the defendant to the clerk of the Court. (See **A Note on Wages** below). The clerk will, after 15 days, pay the money over to the plaintiff.

The Direction to Garnishee operates only against the amount owing from the garnishee to the defendant at the time it is served on the garnishee. It does *not* continue to affect wages or bank deposits until the judgment is paid. A fresh Direction of Garnishee will be necessary to attach further amounts.



A Note on Wages. By law 30 per cent of a defendant's wages are subject to garnishment. If the defendant cannot afford to have 30 per cent of wages garnished, he or she may apply to the judge or to the referee to have the exempt portion increased. The defendant will generally have to show that the increase in exemption is necessary for the maintenance of the defendant's family. Contact the clerk to find out how to make this application. You can apply at the same time to have the judgment paid in instalments.

Information for Garnishees

If you receive a Direction of Garnishee, you should carefully read the NOTICE TO GARNISHEE which appears towards the bottom of the form. If you do owe the money to the defendant named in the NOTICE TO GARNISHEE, you should pay the money you owe (or 30 per cent in the case of wages) to the clerk of the Court. You do not, of course, have to pay into Court more than the amount of the judgment plus costs.

If you do not owe money to the person named in the Direction to Garnishee, you should file with the clerk of the Court named in the form a signed statement in duplicate stating that fact. In no circumstances should a Direction to Garnishee be ignored. Otherwise the plaintiff may obtain a judgment against you for the whole amount mentioned in the Direction to Garnishee.

In the event of a dispute between you and the plaintiff as to whether you owe money to the defendant or not, a trial may be held.

Seizure of Goods

Goods belonging to the defendant may be seized and sold, according to the following procedure, to pay the judgment if it has not been satisfied 15 days after judgment. The clerk will issue a Writ of Execution at the request of the plaintiff. The writ allows the bailiff of the Court to seize and hold for auction goods belonging to the debtor. The bailiff will not seize any goods, however, unless he has specific instructions to do so from the plaintiff. You must also indemnify the bailiff for the value of the goods to be seized.

Certain goods, such as clothing, furniture, utensils, necessary tools and implements, are exempt from seizure up to a certain value.

The defendant may at any time up to the auction prevent the selling of seized goods by paying to the court clerk the amount of the judgment plus costs. The defendant may also apply to the judge to have the execution against goods postponed or to obtain an order for payment of the judgment by instalments. The clerk of the Court can advise you on how to make these applications.

Execution Against Lands

By filing a Writ of Execution with the sheriff of a county, the plaintiff may prevent the judgment debtor from dealing with any land he or she owns in that county until the debt is paid.

Transcript of Judgment

The procedure for collecting an unpaid judgment outlined in this Section can generally only be taken in the area where the judgment was obtained. If the defendant resides in a local division of the Provincial Court (Civil Division), or in a Small Claims Court division outside Metropolitan Toronto other than the division where judgment was obtained, the plaintiff can request the clerk to issue a Transcript of Judgment and send it to the clerk of the court in the division where the defendant resides. The plaintiff can then take all enforcement proceedings through the court office to which the Transcript has been sent.

To have a Transcript prepared and sent, the plaintiff must pay the required fee and supply the clerk with the defendant's address.

Suspension of Driver's Licence

Where you have been rewarded damages resulting from a car accident, you may cause the defendant's driver's licence to be suspended if the judgment is not promptly paid. You will have to arrange to have the clerk forward a certificate of the judgment to the Registrar of Motor Vehicles. If the defendant does not pay the amount owing promptly, the Registrar will suspend his or her driver's licence and it will remain suspended until the judgment is paid.

11. Applications For A New Trial And Appeals

There are two types of appeals to a higher court which may be made from a Provincial Court (Civil Division) judgment: 1) an application for a new trial and 2) an appeal to the Divisional Court of the Supreme Court of Ontario.

New Trial

A "new trial" is exactly that — it is a trial held on the original Claim as though the first trial had never taken place. You must apply for a new trial within 14 days after judgment has been given. The clerk can assist you. The application will be considered by a judge other than the judge who originally tried the matter.

An application for a new trial might be allowed where the defendant had failed to appear at the trial through no fault of his or her own, or where some crucial piece of evidence, such as a lost cancelled cheque or receipt, becomes available after the original trial.

Appeals to The Supreme Court of Ontario

An appeal lies to a Supreme Court judge where the amount of the claim is more than \$500 (not including costs). This type of appeal is generally used where a question of law is involved or where one of the parties feels that the judge's decision was contrary to the weight of the evidence. The appeal court may dismiss the appeal, make the judgment that in its opinion ought to have been given at trial, or, in some circumstances, order a new trial.

Appeals are fairly complex procedures. If you are contemplating an appeal, you will probably need to seek legal advice.

12. Consolidation Orders

If you have three or more Small Claims Court or Provincial Court (Civil Division) judgments outstanding against you, you may apply for a Consolidation Order. A Consolidation Order provides for the orderly payment of debts at a fixed weekly or monthly rate. The order will be made by a judge or referee after a hearing to consider your outstanding debts and your income and expenses.

If you feel a Consolidation Order would be advantageous to you, you should apply to the clerk of the Court in the local division where you reside. You must file with the clerk a sworn statement setting out the details of the outstanding judgments, your income from all sources, and your family support obligations.

A hearing will be scheduled. Your creditors may be present. The judge or referee will hear evidence as to your income and expenditures, and may make an order consolidating the judgments against you and ordering you to pay instalments into Court at certain intervals. As long as you are not in default in making these payments, no other proceedings to collect the debt may be taken in the local division in which the order is made. Upon payment of a fee, the clerk of the Court will send a copy of the order to any other court office. No collection proceedings can then be taken through that court office.

The amounts paid into court will be held by the clerk for distribution to the creditors named in the Consolidation Order. Each creditor is entitled to a share based on the proportion of the total debt which is owed to him. Distribution generally takes place every six months.

13. Costs

Many of the necessary steps in a Provincial Court (Civil Division) proceeding will be taken, on your instructions, by the clerk. Before the clerk acts you will be required to pay a fee. Either the plaintiff or defendant, if successful at trial, may be entitled to recover from the other party the amount spent on fees.



Fees in Provincial Court (Civil Division) are quite low. Your local division office can inform you as to the fees chargeable for any particular procedure. The fees will be slightly higher where a Claim is entered against more than one defendant.

Lawyer's Fee

If you are successful at the trial on a claim for less than \$1,000, and you were represented by a lawyer (or a law student articulated to a lawyer), the judge may order that from \$5 to \$40 be added to your judgment as a counsel fee. If the trial occupied more than one day, the judge may award up to \$50. This "counsel fee", as it is called, is the same as that allowed in all other Small Claims Courts in Ontario.

If you are successful at the trial on a claim for more than \$1,000, and you were represented by a lawyer, the judge may award you a counsel fee of up to \$300. This amount will be added to your judgment. Where you were represented by an articulated student, the maximum is \$150. This provision is new and applies only to the Provincial Court (Civil Division) of the Municipality of Metropolitan Toronto.

14. Consumer Legislation

In recent years, Ontario has enacted significant legislation for the protection of consumers such as The Business Practices Act and The Consumer Protection Act. The purpose of these statutes is to provide a code of proper business practices governing consumer transactions and to provide consumers with the right to compensation where that code has been violated.

The Business Practices Act

Particularly significant to consumers is The Business Practices Act, enacted in 1975. This statute sets out several categories of “unfair practices” in consumer sales. One category is “false, misleading or deceptive consumer representations”. Generally, this category refers to untrue representations made to a consumer to induce him or her to purchase goods or services. Such representations might be as to performance, quality, condition, availability or price advantage. A representation that a dealer has sponsorship or approval which the dealer does not have is also a deceptive representation.

Another category of “unfair practice” is called “unconscionable consumer representation”. This category is intended to cover situations where a salesperson or dealer has taken unfair advantage of a consumer in selling goods or services. Such situations might arise where the consumer is unable to protect his or her interests because of physical infirmity, ignorance, or language difficulties. Other unfair practices are selling goods or services at a price which grossly exceeds the price at which similar goods or services are available elsewhere, or selling to a consumer on credit when the seller knows it is highly unlikely that the consumer will ever be able to pay. High-pressure tactics or very unfair terms and conditions in a sales agreement are also “unconscionable consumer representations”.

It is not easy to say what specific business practices will be considered “unfair practices” by Ontario courts, since there have been few cases decided under the Act. In very complicated situations, it may be necessary to seek legal advice. However, you should realize that the legislation is not intended to be narrow or technical in its application. If you sincerely believe that you have been unfairly dealt with in a consumer transaction, and you are unable to reach a satisfactory settlement with the person who sold you the goods, you should pursue your rights in the Provincial Court (Civil Division) by following the steps set out in this Guide.

The Business Practices Act gives you the right to “rescind” any agreement which you entered as a result of an unfair practice. This means that you are entitled to regard this agreement as having never occurred

and, after returning the goods, to get back the money you paid. If it is no longer possible to return the goods, you are entitled to receive from the seller a refund representing the difference between the amount you paid and the actual value of the goods received.

You must make your claim against the person who sold you the goods within six months of the transaction.

Note that the provisions of The Business Practices Act apply even if there is a term of the agreement to the contrary.

Other rights, remedies, and defences are available to consumers. You should consult the nearest branch of the Ministry of Consumer and Commercial Relations, listed in the Telephone Book under Government of Ontario, for more information.

15. Glossary of Legal Terms

- Action** — a law suit
— *Cause of Action* — the legal basis of the law suit
- Adjournment** — postponement of the hearing to a future date, with the judge's approval
- Affidavit** — a written statement or declaration of facts, sworn to be true, and sworn before someone having the authority to administer oaths
- Counterclaim** — a claim introduced by the defendant against the plaintiff in the same action and arising out of the same circumstances
- Defendant** — the person against whom an action is brought or a claim is made
- Execution** — the putting into effect of a court order; an authorization for the sheriff to seize property of the judgment debtor to satisfy a judgment
- Garnishment** — is the procedure by which a judgment creditor can collect the judgment by claiming from a third party owed by that third party to the defendant; for example, the creditor can get an order requiring the debtor's employer or bank to pay money owed to the debtor directly to the court for the benefit of the creditor
Garnishor — the judgment creditor seeking garnishment of the judgment debtor
Garnishee — the person or corporation who owes money to the debtor (such as his employer or bank)
- Judgment** — the order of the judge which decides the case in favour of one party
Default Judgment — judgment for the plaintiff against the defendant due to the defendant's not having filed a Defence to the plaintiff's claim
Judgment creditor — the successful party to whom money is owing by virtue of the judgment
Judgment debtor — the unsuccessful party who owes money by virtue of the judgment
To sign judgment — where the court clerk issues a default judgment in favour of the plaintiff because the defendant has not disputed the claim

Notice of Motion

— written notice given by one party to the other party of an intention to argue a particular issue on a particular day before the court. The issue, the time and the place must be indicated.

Plaintiff

— one who brings an action against another

Rescind

— to revoke or cancel an agreement or a contract

Seize

Seizure

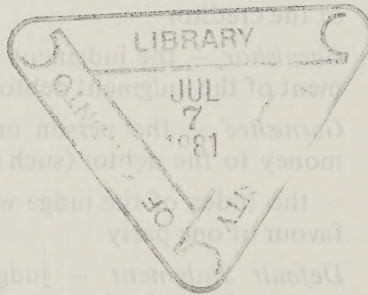
— to take legal possession of property; in particular, where the sheriff takes possession of a judgment debtor's property

**Service,
Served**

— delivery of a legal document to the person concerned

Subpoena

— an order to a witness to appear in court at a specific time





Additional copies of this booklet are available at your nearest office of The Small Claims Court or by writing to:

Communications Office
Ministry of the Attorney General
18th Floor
18 King Street East
Toronto, Ontario
M5C 1C5

Copies are also available free from the Ontario Government Bookstore, 880 Bay Street, Toronto, for personal shopping. Out-of-town consumers write to Publications Services Section, 5th Floor, 880 Bay Street, Toronto, Ontario M7A 1N8. Telephone 965-6015. Toll free long distance 1-800-268-7540, in Northwestern Ontario, 0-Zenith 67200.